IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

Crl.MC.No. 1431 of 2007()

CC.165/2006 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: 2ND ACCUSED IN CC 165/2006.

SINDHYA STANLEY, AGED 38,
W/O.STANLEY, HOUSE NO.5/309, EDAYAKKUNNAM BHAGAM,
SOUTH CHITTOOR DESOM, CHERANELLURE VILLAGE,
KANAYANNUR TALUK.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.E.M.MURUGAN
SRI.PRAVEEN K. JOY

RESPONDENTS: STATE AND DEFACTO COMPLAINANT.

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1. STATE OF KERALA, REP. BY SUB INSPECTOR
OF POLICE, CENTRAL STATION, ERNAKULAM.

2. SHRI.K.VIJAYAN, S/O.KESAVA PISHARADY,
RESIDING AT AISWARYA 8/A, YESORAM NAGAR,
CHERANELLURE.

3. SHRI.P.L.NEVIS,
MUTUAL AID BANKERS,
NEAR MYMOON THEATRE,
CHITTOOR ROAD, ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1431 OF 2007

Dated this the 23rd day of May, 2007

ORDER

The petitioner is the 2nd accused in a prosecution under Secs.406 and 420 read with Sec.34 of the IPC. Altogether there are two accused persons. The crux of the allegations is that a document entrusted by the complainant with the 1st accused has been misappropriated by both the accused persons in collusion to enable the 2nd accused to stake a false claim against the complainant. The entrusted document has been converted to a use which was not contemplated at the time of entrustment for the purpose of illegal enrichment of the accused persons. This, in short, is the allegation.

2. Proceedings were initiated on the basis of a private complaint filed by the complainant which was referred to the police by the learned Magistrate. Investigation is complete. Final report has already been filed. Cognizance has been

taken.

3. The petitioner/2nd accused alone has rushed to this Court at this stage. She - a woman, complains that amounts were due from the 1st accused – a banker, to the petitioner and that there was a sub-mortgage created in her favour by the 1st accused of the property mortgaged to the 1st accused. It is contended that there is a document executed by the complainant which would indicate that such sub-mortgage was in the contemplation of the parties when the 1st accused and the de facto complainant entered into the transaction.

4. Cognizance has been taken on the basis of the final report submitted by the police after due investigation. The mere fact that the accused may be entitled for acquittal/ discharge at later stages of the trial is no reason by itself to justify the invocation of the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. I do not propose to encumber the records with any observations which may adversely affect the interests of either side. Suffice it to say that I am satisfied that this is an eminently fit case where the petitioner must appear before the learned Magistrate and seek premature termination of the proceedings in accordance with the provisions of the

Code. I have no reason to assume that the learned Magistrate would not consider such plea for discharge at the stage of Sec.239/240 of the Cr.P.C. Every court must do the same.

5. The learned counsel for the petitioner submits that if the personal appearance of the petitioner/2nd accused were insisted before the plea of discharge were taken up for consideration, that would prejudice the interests of the parties and would enable the complainant to succeed in his attempt to vex and harass the petitioner. I am satisfied, in the facts and circumstances of this case, that the learned Magistrate must permit the petitioner/2nd accused to appear through pleader and raise her contention for discharge. Only if the learned Magistrate feels that the charges are liable to be framed, need the personal appearance of the 2nd accused be insisted by the learned Magistrate.

6. With the above observations, this Crl.M.C. is dismissed. I may hasten to observe that I have not intended to express any opinion on merits on the acceptability of the allegations either way.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge